



STATE BOARD OF LAND COMMISSIONERS

Dirk Kempthorne, Governor and President of the Board

Pete T. Cenarrusa, Secretary of State

Alan G. Lance, Attorney General

J. D. Williams, State Controller

Marilyn Howard, Superintendent of Public Instruction

Stanley F. Hamilton, Secretary to the Board

**Final Minutes
Regular Land Board Meeting
December 14, 1999 9:00 AM**

The regular meeting of the Idaho State Board of Land Commissioners was held on Tuesday, December 14, 1999 in Boise, Idaho. The Honorable Dirk Kempthorne presided. The following members were present:

Honorable Secretary of State Pete T. Cenarrusa
Honorable Attorney General Alan G. Lance
Honorable State Controller J.D. Williams
Honorable Superintendent of Public Instruction Marilyn Howard

Secretary to the Board Stanley F. Hamilton

• **CONSENT AGENDA**

Director Hamilton provided background information on Consent Agenda items.

A motion was made by Secretary of State Cenarrusa and seconded by Attorney General Lance to approve the Consent Agenda in its entirety. The motion carried on a vote of 5-0.

- 1. Official transactions – approved**
 - A. Bureau of Range Management and Surface Leasing Official Transactions for Cropland, Grazing, Cottage Site, Miscellaneous and Submerged Land Leases – October 1999
 - B. Timber Sale Official Transactions for the period October 23, 1999 through November 19, 1999
 - C. Bureau of Real Estate, Land Sale Section – October 1999
 - D. Bureau of Real Estate, Easement Section – October 1999
 - E. Bureau of Real Estate, Easement Section – November 1999
 - F. Bureau of Minerals – November 1999
- 2. Addition to qualified bidders list, timber sales, staffed by Ron Litz, Chief, Bureau of Forest Management – approved**
 - A. Akers Logging, Inc., 17400 S. Weller Rd., Worley, Idaho 83876-9622
- 3. The following minutes – approved**
 - A. Regular Land Board Meeting – November 9, 1999

4. Results of auctions for 1999 expiring grazing lease G-6555 – Scott Nicholson, staffed by Tracy Behrens, Range Management Specialist – approved

DEPARTMENT OF LANDS RECOMMENDATION: The department recommends that the Board accept the high bids submitted by Mr. Nicholson at both of the auctions for lease G-6555 and that one lease be issued to Mr. Nicholson to cover all of the acreage in the expiring lease. The lease will include a management agreement based on the management proposal submitted by Mr. Nicholson and agreed to by the department.

ACTION: Board approved.

5. Proposed changes to State Land Sale Certificate and State of Idaho Deed to better conform with Idaho Code 47-701, staffed by Perry A. Whittaker, Chief, Bureau of Real Estate – approved

DEPARTMENT OF LANDS RECOMMENDATION: Staff requests approval of the proposed State of Idaho Land Sale Certificate and Deed.

ACTION: Board approved.

6. Boise River Disclaimer – Request approval for disclaimer of interest to Jack Dechambeau on 20.15 acres of accretion land adjacent to the Boise River in Ada County, staffed by Perry A. Whittaker, Chief, Bureau of Real Estate – approved

DEPARTMENT OF LANDS RECOMMENDATION: It is recommended that a disclaimer of interest be issued for this parcel of accretion land totaling 20.15 acres adjacent to the present location and being part of the former location of the Boise River. This disclaimer of interest will be issued contingent upon the applicant granting to Ada County a 25.00 foot wide permanent greenbelt pedestrian easement for approximately $\frac{3}{4}$ of a mile along the ordinary high water mark along the left (south) boundary of the South Channel of the Boise River. The applicant will grant the easement with the understanding that a security fence will be constructed along his property when the greenbelt is constructed. The applicant shall also be required to grant to the State of Idaho a disclaimer of interest for the current riverbed lying adjacent to the applicant's property. The recommended fee is \$600.00.

ACTION: Board approved.

7. Request from MarRue Simmons to waive the requirement of an unimproved public use easement along her Salmon River property, staffed by Perry A. Whittaker, Chief, Bureau of Real Estate – approved

DEPARTMENT OF LANDS RECOMMENDATION: It is recommended that the Department waive the requirement of the 25-foot wide unimproved public recreational use easement as per Mrs. Simmons' request.

ACTION: Board approved.

• REGULAR AGENDA

8. Director's Report, presented by Stanley F. Hamilton, Director, Department of Lands

- Principal Funds Chart – The fund is comprised mostly of timber sale dollars but also includes land sales in the distant past and some mineral royalties that accrue on an annual basis. As of November 30, 1999 the Principal Funds for Public Schools balance is \$543,198,336 and the Pooled Funds balance is \$247,631,993. The total for these funds as of November 30, 1999 is \$790,830,329.
- Permanent Endowment Fund Contribution by Beneficiaries – So far this year the department and the board have contributed \$24,000,000 to the Public Schools Permanent Fund and approximately \$37,000,000 total for all nine endowments.
- Income Contributions – The Income Fund is monies distributed directly to the beneficiaries. These funds do not go to the Permanent Fund. The total to date for Public Schools is \$4.3 million. A total for all nine endowments is \$7.6 million.
- Idaho Timber Harvest Summary by Calendar Year for the Years 1989 through 1998 – This report covers all sources in Idaho. The numbers are compiled and published by the Forest Service.

No action taken on this agenda item.

TOBACCO SETTLEMENT MONEY

At this time, Governor Kempthorne stated a press conference was held this morning to officially receive the first installment of tobacco settlement money. The Governor acknowledged and complimented Attorney General Alan Lance for his significant role and efforts in making the settlement a reality. A group of attorneys general throughout the United States were diligent in this effort. Attorney General Lance was tenacious and was able to secure the funds for Idaho without strings attached. A total dollar amount over \$700,000,000 is anticipated over the next twenty-five years. The Governor will recommend to the Legislature that the principal of this money not be spent but invested with the interest being utilized. By utilizing only the interest, Idahoans for generations into perpetuity will be able to benefit from this accomplishment.

9. Request by Governor Kempthorne to discuss State Board of Land Commissioners' position concerning Tablerock Cross Parcel

Governor Kempthorne requested that this item be included on the agenda. Having not been a member of the Land Board when different events occurred, the Governor wanted to review available background information.

The Governor said his review of the materials confirms this parcel is private property. The Land Board followed all procedures and performed their responsibilities as prescribed by law. The Governor commented it is worth noting that when 10,000 citizens march in the streets of the capitol city it is clear they are supportive of that particular structure being part of the skyline. The Governor stated that he has expressed his comments both through letter, which has been sent, and through proclamation, which has been issued.

Secretary of State Cenarrusa concurred with the Governor stating that everything was done legally from the beginning and the Surplus Property law was followed to the word.

DEPARTMENT OF LANDS RECOMMENDATION: None

ACTION: None

10. Marsing Job Corps Site Surplus Property, presented by Perry A. Whittaker, Chief, Bureau of Real Estate

DEPARTMENT OF LANDS RECOMMENDATION: The property would be offered for sale at public auction as a 52.51-acre parcel with a minimum bid of \$264,000. The other alternative offered is as two (2) parcels. Parcel 1 includes 43.51 acres appraised at \$174,000 and Parcel 2 includes 9 acres appraised at \$90,000. Terms of sale are proposed at ten percent (10%) down with the balance to be financed over a 20-year period at the interest rate in effect on the day of sale. A finder's fee in the amount of 4% will be paid to the licensed real estate agent whose client is successful in purchasing the property from the sale proceeds.

The property configuration deriving the most money for the State would be utilized. Sale of the waterfront Parcel No. 2 would be contingent upon the sale of Parcel No. 1. Idaho Department of Fish and Game will retain an easement for public use of an access road and boat ramp on Parcel No. 2.

DISCUSSION: Mr. Whittaker stated the U.S. General Services Administration (GSA), Office of Property Disposal, has offered to assist with the marketing and sale of this property if the Land Board is interested. Property Disposal manages the use and disposal of surplus real property government-wide. Surplus properties are made available for various public purposes, including negotiated sale to state and local governments and eligible nonprofit institutions or the properties are sold competitively to the general public.

Attorney General Lance asked if the offer by the federal government would be free of charge. Mr. Whittaker stated GSA indicated their cost would be minimal. Attorney General Lance asked if it would stand that anything GSA put together would be subject to final approval of the Land Board. Mr. Whittaker responded if that was the board's desire, it would be set up in that way.

Attorney General Lance stated subject to listening to the possible exchange with Mr. Silver, he would be inclined to turn the property over to GSA to see if they can help us out. Director Hamilton commented he thinks there is merit in asking GSA to help. He also stated there is no question the Land Board will have final say on the property.

AUDIENCE WITH THE BOARD: Mr. Tracy Silver was granted an audience with the board. Mr. Silver expressed an interest in a land exchange. Mr. Silver's property near Grand View, Idaho would be exchanged for the Marsing Job Corps site.

DISCUSSION: Attorney General Lance asked Mr. Silver how many acres he is talking about for the proposed exchange. Mr. Silver said there is a total of 300 acres. The west 150 acres carries \$100,000 debt. The east 150 acres is free and clear. Attorney General Lance asked where the water source comes from. Mr. Silver responded there are three sources. The first source is a lateral canal out of C. J. Strike. The second source is natural flowing water from Shoofly Creek. The third source is ground water. There is water for roughly 280 acres out of the 300 total acres.

The debt-free parcel of land is on the east 150 acres. The creek is on the west 150 acres.

Attorney General Lance asked for the appraised value of the Marsing property. Mr. Whittaker stated \$680,000, which includes the buildings. The appraised value for the land alone is \$264,000.

Controller Williams asked if the site has been secured. Mr. Whittaker responded Fish and Game began last week to lock up the buildings but it is unknown if the work is completed. He will follow up with Fish and Game to find out if the property is now secure.

Attorney General Lance stated the element that is presently missing is a recent appraisal on the proposed property. Mr. Silver said when he refinanced the property the bank was willing to use his real estate agent's assessment of value short of having an appraisal completed. The value given in the agent's letter

was \$1400 to \$1900 an acre. With creek frontage, the value would be around \$2,000 an acre. The proposed exchange property is on the opposite end of the 300-acre parcel, and away from the creek, so the value might go down a little bit. But if the property were held as a 300-acre parcel it would hold the \$2,000 an acre value.

Attorney General Lance asked Mr. Silver if the seven acres contiguous to the river is important to his (Mr. Silver's) overall vision for the property. Mr. Silver responded yes, the water access is very important. Attorney General Lance said, as an example, if it was necessary to adjust values, with three acres possibly contiguous to the boat ramp left to the state, would that create a big problem. Mr. Silver said yes. His concern is traffic and policing of the water area. The property would be unmonitored.

Attorney General Lance observed that it seems to be everyone's intention to assure the public has continued access to the boat ramp. Mr. Silver stated he was not aware of that provision. Attorney General Lance explained to Mr. Silver that he (Mr. Silver) would not be purchasing the boat ramp or the right-of-way down to the river. Mr. Silver said that it was his understanding the boat ramp and right-of-way down to the river was included in the property. Attorney General Lance asked Mr. Whittaker if he was mistaken in his understanding. Mr. Whittaker advised Attorney General Lance that he is correct. Fish and Game wishes to sell the property subject to the state retaining public access for the road and boat ramp.

Director Hamilton asked Attorney General Lance if this transaction were to hinge on the boat ramp and road access, is that still on the table or was it taken off the table completely. Attorney General Lance said he was always under the impression that the road access and boat ramp was going to be retained by the public and he would have difficulty taking away any public access to the river.

ACTION: Governor Kempthorne requested that Director Hamilton prepare a more definite proposal, including additional data and the process by which a land exchange could take place, for the January 11, 2000 regular Land Board meeting. Controller Williams recommended that an agreement be drafted to set out terms and conditions for the possible land exchange with Mr. Silver.

• **EXECUTIVE SESSION** – *heard out of sequence*

- ❑ A motion was made by Attorney General Lance to resolve into Executive Session at 9:45 a.m. Secretary of State Cenarrusa seconded the motion. The motion carried on a vote of 5-0.

12. To consider acquiring an interest in real property that is not owned by a public agency – Idaho Code 67-2345 (1)(c), presented by Perry A. Whittaker, Chief, Bureau of Real Estate

- ❑ A motion was made by Secretary of State Cenarrusa to resolve back into Regular Session at 10:30 a.m. Attorney General Lance seconded the motion. The motion carried on a vote of 5-0.

11. Request to review zoning restrictions and proposed lease to Blaine County on Ohio Gulch Parcel, presented by Scott Nichols, Chief, Bureau of Minerals

DEPARTMENT OF LANDS RECOMMENDATION: (1) The department send a letter to Blaine County informing them that they have no jurisdiction over endowment land and directing the county to remove the county's zoning overlays and restrictions on state lands in Ohio Gulch, legally described as Section 16, Township 3 North, Range 18 East; (2) Withhold issuance of the recreation lease site to Blaine County

until the zoning issue is resolved; (3) Continue to cooperate with Blaine County to help plan the long-term use of endowment land.

DISCUSSION: Attorney General Lance asked how much money the endowment is losing as a result of the cease and desist order. Mr. Nichols stated McStay Construction has been in weekly contact. McStay has indicated they had planned to remove several thousand yards of material from this source to finish several jobs this year. That yardage is not a substantial sum. However, the question comes next spring when the construction season starts again in April.

McStay Construction has clients for removal of 100,000 yards from this lease and the Transportation Department has plans for probably an equivalent 100,000 yards from their lease to the east. At \$1.55 per yard, the total could be approximately \$300,000.

AUDIENCE WITH THE BOARD: Blaine County Commissioner Leonard Harlig and Blaine County Prosecuting Attorney Douglas Werth were granted an audience with the board. Commissioner Harlig expressed Blaine County's desire to negotiate a reasonable compromise between the state and the county.

DISCUSSION CONTINUED: Commissioner Harlig stated the county recognizes the need the state has for these lands and their utility. The county hopes the state can understand the place that the county is in relative to upholding county ordinances and satisfying constituents. The county is not saying the state "can't" do anything. The county would like an opportunity to go through its process. That process includes public hearings and getting available information to homeowners in the area so they have a better understanding of the needs and events taking place. Commissioner Harlig stated the county is not looking for a fight. He said the county respects and understands the state's position and he would hope the state would respect and understand the county's position.

From the standpoint of the recreational lease, Commissioner Harlig said he realizes the two issues have some crossover but Blaine County would like to see the issues addressed separately. For the county, the recreational lease is strictly a financial one and the county is prepared to enter into that agreement with the board. The other issue is a zoning and financial issue. The county is willing to talk about how that issue can best be resolved.

Prosecuting Attorney Werth said Blaine County is dealing with Local Land Use Planning Act, Provision 67-6528. Blaine County concedes that the statute says the county shall take into account the plans and the means of the public agency. All Blaine County is saying is that the accounting for the plans and the means of the public agency should be done in the context of the county zoning ordinance. With respect to the A-10 lands, Blaine County has been trying to get the state to apply for a conditional use permit that would allow for public hearings available under the county ordinance.

With respect to A-5 land that may be involved, the state could seek a change in zoning because the land is directly adjacent to an A-10 zone. In considering both of those applications under the statute, Blaine County would be required to take into account the demands and needs of the state agency. Blaine County's view is that the statute requires the counties to apply their ordinances in that context.

Attorney General Lance commented, speaking for himself, if the board accedes to the position of Blaine County, the Land Board has then exposed themselves all over the state of Idaho to supervision, if you will, by units of county as well as city government. Attorney General Lance feels that is probably inconsistent with where the Land Board needs to be. The Land Board can not manage its lands and then have a county change its zoning ordinance and start telling the state of Idaho what it can and can not do. That is probably inconsistent with the Land Board's constitutional obligations.

Short of litigation, Attorney General Lance said he does not know how to get Blaine County out of the "box" it is in politically. He commented it seems to him the state has been through this with Blaine County before time and again and either the zoning ordinances pertain to state land or they do not. He feels it is high time that the issue be resolved. Attorney General Lance again stated this is his personal opinion.

Controller Williams commented one thing that soured the situation is what occurred when the board was trying to get the Triumph Mine situation finalized. The county put a Stop Order on the hauling of gravel. After the Stop Order was issued, the county did allow the hauling of 44 more loads but then the 44 loads turned out not to be enough to complete the job due to a miscalculation of total needs. When a request to haul additional loads to finish the job was submitted to the county, the county denied the request.

Triumph Mine is a multi-million dollar deal and is a health and safety issue. The board is doing the Triumph Mine work for Blaine County citizens at a tremendous financial burden to all the taxpayers of Idaho. The board was trying to finish the job and the county would not let dirt be taken up a road. Controller Williams stressed that Blaine County and the state have to be willing to do a lot of give and take. He feels the board and Blaine County should work things out. Prosecuting Attorney Werth responded he feels that is Blaine County's position also. That is why he and Commissioner Harlig are attending the board meeting today.

Governor Kempthorne asked how this situation relates to the recreational property the board is providing. Mr. Nichols responded as far as he knows there is no zoning issue that would affect the recreational lease or issuance of that lease. Mr. Nichols stated he wanted to point out regardless of the Commissioner's and Mr. Werth's intent to work with the state on the zoning issue, his [Mr. Nichols'] understanding is the R-2 zone still does not allow any gravel extraction for the west piece of the mineral lease. Unless a modification through zoning occurs, there really is no room to negotiate.

Governor Kempthorne said the reason he brought up the recreational lease is that he remembers the meeting the board had with Blaine County. Blaine County does not have soccer fields. If the board wanted to go by the letter of the law, then the board probably would not have approved the recreational lease because the board could have probably received more money through other means. But the board saw there was a value to the young people in the community. The Governor said he would really like to see Blaine County take a different approach on this issue.

Governor Kempthorne asked Mr. Nichols for the Department of Lands recommendation. Mr. Nichols said one of the important things needed is to modify the zoning boundary between the R-2 and A-10 zone. If not, delete the zoning completely. Department of Lands staff is willing to meet with the county and address the transportation, safety and noise issues that go along with the transportation corridor.

However, residents need to understand that the road is a transportation corridor and it was their choice to move into those areas. The residents moved into the area after that road and access was already established. This area does not have a new history of that industrial-type transportation. The transfer station has been there for many years. The garbage dump and waste disposal facilities have been there for many years. The mineral lease has been in existence since 1978. Mr. Nichols requests that the board support the Department of Lands' three recommendations. The issue needs to be resolved before April 2000.

Director Hamilton stated that in 1991 then Attorney General Echhawk addressed the question of county zoning on endowment lands. The Department of Lands has used Attorney General Echhawk's opinion as its policy since that time. The Department of Lands has been willing to work with the counties to come to some agreements as to how properties can be used. The agreements do not constitute zoning. But they do constitute an agreement between two, if you will, sovereign-type organizations. That arrangement has worked fairly well in most cases where we have had an opportunity to do it.

Director Hamilton said he feels the state may be able to do something along that same line with Blaine County. But, he added, unless the current Attorney General is willing to overrule the earlier Attorney General, that is pretty much the guidance the Department of Lands has followed.

Attorney General Lance commented he feels Attorney General Echhawk had the right idea in 1991.

Secretary of State Cenarrusa commented things have changed a lot in the last 50 years. He stated that fifty years ago the only thing the land there was good for was raising sheep. He recalls raising sheep both on Indian Creek and Ohio Gulch. He remembers the area as good sheep range. He feels we have advanced a long way in land values and in what the land is good for.

Secretary of State Cenarrusa further stated that the Land Board's constitutional mandate is to maximize the income from the endowments and that mandate is what the board has to stick with. He said he did have some involvement with Owl Rock Road and he recalls sending Attorney General Echohawk's letter to Blaine County to inform the county of the Attorney General's opinion, which the board feels is right. He is happy that a resolution was reached on that issue. He feels that Commissioner Harlig's involvement with Ohio Gulch will help bring about a resolution on this issue.

Governor Kempthorne asked Commissioner Harlig if he had any strong objections to the Department of Lands recommendations. Commissioner Harlig responded that Director Hamilton has suggested there may be a way of doing this through some sort of agreements and the county would be interested in doing this in any way that will work for both parties. The process does not have to be formal. It can be an informal process. The county would like to see this issue peacefully resolved for the state's sake and for Blaine County's sake. The county is willing to enter into any discussions along those lines.

State Controller Williams stated he is impressed that Commissioner Harlig and Prosecutor Werth attended the board meeting today. He is equally impressed with Commissioner Harlig's apology to the board. Controller Williams feels all parties should work toward a resolution. He offered to sit down with parties at some point to help frame issues and options. He stated the board does not have a lot of "wiggle" room on this issue because of the consequences statewide.

Superintendent Howard agreed with Secretary of State Cenarrusa in that a lot of things have changed over the last 50 years. We can anticipate things will change a lot more in the next 50 years. What we are seeing in Blaine County is probably actually just an indication of what we will be seeing in all of the state in the future as population continues to grow and develop. This decision is an important one not just in this instance but also for the future.

ACTION: A motion was made by Attorney General Lance to adopt the recommendation of the Department of Lands staff. Secretary of State Cenarrusa seconded the motion. The motion was carried on a vote of 5-0.

- **INFORMATION AGENDA**

Director Hamilton briefed the Land Board on the Information Agenda items. No Land Board action is required on the Information Agenda.

13. Timber Sale Activity Report
14. Fire Report
15. Interest Rate Update

There being no further business before the board, the meeting adjourned at 10:55 a.m.

IDAHO STATE BOARD OF LAND COMMISSIONERS

/s/ Dirk Kempthorne
President, State Board of Land Commissioners and
Governor of the State of Idaho

/s/ Pete T. Cenarrusa
Pete T. Cenarrusa
Secretary of State

/s/ Stanley F. Hamilton
Stanley F. Hamilton
Director

The above-listed final minutes were approved by the State Board of Land Commissioners at the January 11, 2000 regular Land Board meeting.